

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

=====X
FRANCISCO CHAVEZ and GLORIA BARREIRO-CHAVEZ,

Index No.:

Plaintiffs,

**VERIFIED
COMPLAINT**

- against -

THE CITY OF NEW YORK AND KIM J. CHARLES

Defendants.
=====X

Plaintiffs, FRANCISCO CHAVEZ and GLORIA BARREIRO-CHAVEZ, by their attorneys, KRAMER, DILLOF, LIVINGSTON & MOORE, ESQS., as and for their Verified Complaint, set forth the following, upon information and belief:

**AS AND FOR A FIRST CAUSE OF ACTION
AS TO ALL DEFENDANTS HEREIN**

1. That at all times herein mentioned, plaintiffs were residents of the County of Kings, the City of New York and State of New York.
2. That at all times herein mentioned, defendant, THE CITY OF NEW YORK, was a municipal corporation duly organized and existing under and pursuant to the laws of the State of New York.
3. That at all times herein mentioned, defendant, THE CITY OF NEW YORK, operated, maintained, managed, and controlled the New York City Police Department as part of and in conjunction with its municipal functions.
4. That on the 9th day of June, 2013, and at all times hereinafter mentioned, Police Officer MARK PAWLITSCHKEK, Shield No. 22969 and Police Officer DANIEL FRANSCA, Shield No. 23279, were agents, servants and/or employees of defendant, THE CITY OF NEW

YORK, and were acting in their capacity as police officers with the New York City Police Department (hereinafter "NYPD").

5. That on August 29, 2013, plaintiffs duly filed with defendant, THE CITY OF NEW YORK, a verified Notice of Claim setting forth the time when and place where the occurrence which is the subject of this lawsuit occurred, the nature and extent of the injuries and damages sustained and the amount claimed.

6. Such claims were presented within ninety (90) days of the occurrence of the causes of action herein.

7. More than thirty (30) days have elapsed since such presentation of said Notice of Claim, and the defendant, THE CITY OF NEW YORK, has not adjusted the same and has failed and neglected to make any payment of such claims and causes of action.

8. This action is commenced within one year and ninety days after the date of occurrence.

9. Plaintiffs have complied with all conditions precedent to the commencement of this action.

10. That at all times herein mentioned, police officers mentioned herein were police officers employed by the defendant, THE CITY OF NEW YORK, and their activities as set forth herein were performed on behalf of defendant, THE CITY OF NEW YORK.

11. That at all times herein mentioned, defendant, THE CITY OF NEW YORK, supervised the NYPD, including Police Officer MARK PAWLITSCHKE, Shield No. 22969, Police Officer DANIEL FRANSCA, Shield No. 23279, Sergeant MARK BAZATA, Shield No.94, and all other police officers thereof.

12. That at all times herein mentioned, the police officers mentioned herein were acting within the scope of their employment as police officers with defendant, THE CITY OF NEW YORK.

13. That at all times herein mentioned, the NYPD police officers mentioned herein were assigned to Police Service Area (hereinafter "PSA") No. 2 Housing Impact Unit, located at 560 Sutter Avenue Brooklyn, NY 11207, in the County of Kings, in the City of New York and the State of New York.

14. That at all times herein mentioned, the defendant, THE CITY OF NEW YORK, owned, operated, maintained, managed and controlled a certain marked motor vehicle identified as NYPD Van No. 9320 and bearing a VIN and New York State Registration known to defendant, THE CITY OF NEW YORK, for the year 2013.

15. That on the 9th day of June, 2013, police officers from the NYPD Police Service Area No. 2 were operating the aforesaid marked police motor vehicle owned, maintained, managed and controlled by the defendant, THE CITY OF NEW YORK, with the knowledge, permission and consent of the defendant, THE CITY OF NEW YORK.

16. That at all times herein mentioned, the aforesaid motor vehicle identified as "Housing Van No. 9320" was owned, operated, maintained, managed and controlled by the defendant, THE CITY OF NEW YORK, and was being operated by police officers from PSA No. 2 of the NYPD.

17. That on the 9th day of June, 2013, southbound Hinsdale Street, in the vicinity of Dumont Avenue in the County of Kings, New York, was and still is a public highway used extensively by the citizens of the City of New York, the State of New York and others.

18. That on the 9th day of June, 2013, police officers from PSA No. 2 were operating the aforesaid motor vehicle owned, maintained, managed and controlled by the defendant, THE CITY OF NEW YORK, over and along the public roadway located in the vicinity of the southbound Hinsdale Street in the vicinity of Dumont Avenue and the property and premises known as 390 Hinsdale Street in the County of Kings, in the City of New York and the State of New York.

19. That at all times mentioned, the aforesaid motor vehicle owned, maintained, managed, and controlled by defendant, THE CITY OF NEW YORK, and operated by its police officers, was operated, owned, managed and controlled over and upon the public highways including southbound Hinsdale Street in the vicinity of Dumont Avenue and the property and premises known as 390 Hinsdale Street, in the County of Kings, in the City of New York and the State of New York, with the knowledge, permission and consent of the defendant, THE CITY OF NEW YORK.

20. That on The 9th day of June, 2013 and at all times herein mentioned, the motor vehicle owned, maintained, managed, and controlled by the defendant, THE CITY OF NEW YORK, operated by its police officers and identified as "Housing Van No. 9320", was in pursuit of a motor vehicle, and such pursuit included in the vicinity of southbound Hinsdale Street in the vicinity of Dumont Avenue and the property and premises known as 390 Hinsdale Street, in the County of Kings, in the City of New York and the State of New York.

21. That at all times hereinafter mentioned defendant KIM J. CHARLES owned, managed, maintained and controlled a 2003 GMC Yukon Suburban motor vehicle bearing New York State registration No.FDV-9554 for the year 2013.

22. That at all times hereinafter mentioned, MICHAEL PARSONS was operating the 2003 GMC Yukon Suburban motor vehicle bearing New York State registration No. FDV-9554 for the year 2013 with the agreement, consent and permission of defendant, KIM J. CHARLES.

23. That on the 9th day of June, 2013, MICHAEL PARSONS was operating the aforesaid motor vehicle over and along the public roadways in Brooklyn those roadways located in the vicinity of the intersection of Hinsdale Street and Dumont Avenue and the property and premises known as 390 Hinsdale Street, in the County of Kings, in the City of New York and the State of New York.

24. That on the 9th day of June, 2013, the aforesaid motor vehicle owned by defendant KIM J. CHARLES and operated by MICHAEL PARSONS traveled southbound on Hinsdale Street in the vicinity of Dumont Avenue and the property and premises known as 390 Hinsdale Street, in the County of Kings, in the City of New York and the State of New York, in a negligent and reckless manner while being chased and/or pursued by THE CITY OF NEW YORK through its agents, servants and employees, including but not limited to Police Officer MARK PAWLITSCHKEK, Shield No. 22969 and Police Officer DANIEL FRANSCA, Shield No. 23279, and proceeded straight through the intersection of Hinsdale Street and Dumont Avenue at an excessive rate of speed, and that MICHAEL PARSONS, without paying attention to the roadway intersection or to the condition of vehicular or pedestrian traffic at that intersection, failed to stop or yield as was required by law.

25. That on the 9th day of June, 2013, at the aforesaid location, the defendant, THE CITY OF NEW YORK, through its agents, servants and employees, with reckless disregard for the safety of others, carelessly and recklessly owned, operated, managed, maintained and controlled their motor vehicle while in pursuit of the aforementioned 2003 GMC Yukon

Suburban bearing New York State registration No.FDV-9554 for the year 2003, so as to cause that motor vehicle to violently leave the roadway and strike, crash into and collide with plaintiffs on the property and premises known as 390 Hinsdale Street, in the County of Kings, in the City of New York and State of New York, who were lawfully thereat.

26. That the defendant, THE CITY OF NEW YORK, its agents, servants and employees, including but not limited to Police Officers assigned to Police Service Area No. 2, were negligent, careless and reckless in pursuing a civilian motor vehicle in marked NYPD Housing Police Van No. 9320 through the streets of Brooklyn, including southbound on Hinsdale Street in Brooklyn, New York at a high and excessive rate of speed, starting at or about the intersection of Belmont Avenue and Powell Avenue, and continually pursuing the aforementioned vehicle at a high and excessive rate of speed in close proximity under the circumstances then and there existing and in a careless, negligent and reckless manner; in causing the aforementioned 2003 GMC Yukon Suburban bearing New York State registration No.FDV-9554 for the year 2013 being pursued by marked NYPD Housing Van No. 9320 to leave the Hinsdale Street roadway at a high and excessive rate of speed and become involved in a collision with the residence and/or premises and real property known as 390 Hinsdale Street in Brooklyn, New York, and as a result of said collision, causing said vehicle to strike plaintiffs FRANCISO CHAVEZ and GLORIA BARREIRO-CHAVEZ; in violating the provisions of the New York State Vehicle and Traffic Law ("VTL"), including but not limited to VTL §388, §509, §600, §1104, §1110, §1144-b, §1146, §1172, §1180 and §1212, as well as violations of the provisions of the Patrol Guide of the NYPD, including but not limited to those prohibiting the use of an NYPD Department van for a vehicular pursuits, those governing vehicle pursuits, rendering aid and conducting investigations; in the pursuing officers being off-post at the time

the pursuit was initiated; in the NYPD, its agents, servants and/or employees failing to timely and properly supervise the pursuing officers; in failing to make proper and timely notifications regarding the pursuit; in failing to timely and properly document their actions relative to the pursuit and the resultant collision; in the pursuing officers utilizing their personal cell phones instead of their Department issued radios in an attempt to make stealth notifications to NYPD supervisory personnel during and after said pursuit; in failing to make timely and proper notifications regarding the manner in which the vehicle being pursued was operating; in failing to timely and properly terminate the pursuit; in failing to make proper and timely notifications regarding the collision which terminated the pursuit; in failing to warn of their approach; in failing to utilize sirens or other audible sound warning devices; in failing to utilize emergency response lighted warning lamps; in following too closely; in operating said motor vehicle at a fast and excessive rate of speed despite the amount of vehicular and pedestrian traffic in the area; in negligently training and instructing the driver of their motor vehicle; in negligently training and instructing the driver of said motor vehicle as to the proper practices and procedures in the operation of their motor vehicle; in having negligent and improper hiring practices; in failing to properly investigate employees and potential employees; in traveling at a fast, excessive and dangerous rate of speed in view of the surrounding circumstances and conditions then and there existing and without keeping a proper lookout for the safety of others; in acting with conscious and reckless disregard for the safety of others; in causing the aforementioned 2003 GMC Yukon Suburban bearing New York State registration No.FDV-9554 for the year 2003 to collide with and crash into the plaintiffs; in failing to make proper and timely radio transmissions regarding the pursuit; in violating NYPD Patrol Guide regulations, including but not limited to, §212-39 regarding vehicle pursuits, and others regarding police officer duties and responsibilities and

patrol supervisor duties and responsibilities; in failing to render proper aid to the injured plaintiffs, and in failing to timely and properly investigate the collision that occurred as the result of its pursuit of the 2003 GMC Yukon Suburban motor vehicle bearing New York State registration No.FDV-9554 for the year 2013 and in failing to render aid to plaintiffs, FRANCISCO CHAVEZ and GLORIA BARREIRO-CHAVEZ, instead knowingly and intentionally leaving the scene of the accident.

27. That by reason of the foregoing, plaintiffs FRANCISCO CHAVEZ and GLORIA BARREIRO-CHAVEZ sustained blunt impact injuries and other severe and serious personal injuries for which plaintiffs incurred hospital and medical expenses and which injuries are of a severe and permanent nature.

28. That the aforesaid occurrence was caused wholly and solely by reason of the negligence, carelessness and reckless disregard for the safety of others by the defendants, without any fault or negligence on the part of the plaintiffs, FRANCISCO CHAVEZ and GLORIA BARREIRO-CHAVEZ, contributing thereto.

29. That solely as a result of the foregoing, negligence and carelessness by the defendants herein, plaintiffs sustained damages in an amount exceeding the jurisdictional limits of all other courts which would otherwise have jurisdiction.

30. That this action falls within one or more of the exceptions set forth in CPLR 1602, including but not limited to CPLR 1602(1)(b), 1602(6) and CPLR 1602(7), as well as the savings provisions of CPLR 1602(2), including but not limited to CPLR 1602(2)(iv).

**AS AND FOR A SECOND CAUSE OF ACTION
AS TO DEFENDANT KIM J. CHARLES**

31. Plaintiffs repeat, reiterate and reallege each and every allegation contained in

those paragraphs of the complaint marked and designated 1. through 30., inclusive, with the same force and effect as if hereinafter set forth at length.

32. Defendant KIM J. CHARLES, prior to the aforesaid collision of June 13, 2013, failed to investigate the qualifications, competence, capacity, abilities and/or capabilities of MICHAEL PARSONS who, on June 13, 2013, was charged with the operation, maintenance, management and control of the 2003 GMC Yukon Suburban motor vehicle bearing New York State registration No.FDV-9554 for the year 2013 with the agreement, consent and permission of said defendant, and defendant KIM J.CHARLES failed to make sufficient inquiry and investigation regarding MICHAEL PARSONS, as to his capability, ability and/or competence of said person rendering control of the aforesaid vehicle.

33. As a result of the aforesaid negligence of defendant KIM J. CHARLES, plaintiffs FRANCISCO CHAVEZ and GLORIA BARREIRO-CHAVEZ were severely injured and damaged, rendered sick, sore, lame and disabled, and sustained severe shock and mental anguish, great physical pain and emotional upset, injuries for which the plaintiff received medical treatment, and for which plaintiffs incurred hospital and/or medical expenses and which injuries are of a severe and permanent nature.

34. The amount of damages sought exceeds the jurisdictional limits of all other courts which would otherwise have jurisdiction.

**AS AND FOR A THIRD CAUSE OF ACTION
FOR LOSS OF SERVICES**

35. Plaintiffs repeat, reiterate and reallege each and every allegation contained in those paragraphs of the complaint marked and designated 1. through 34. inclusive, with the same force and effect as if hereinafter set forth at length.

36. Prior to this action, plaintiffs FRANCISO CHAVEZ and GLORIA BARREIRO-CHAVEZ were lawfully wed.

37. By reason of the foregoing, plaintiff FRANCISO CHAVEZ has been deprived of the affection, services, society, love, and companionship of his wife, GLORIA BARREIRO-CHAVEZ, and has been caused to become obliged to expend sums of money for medical and hospital care on her behalf.

38. That by reason of the foregoing, plaintiff FRANCISO CHAVEZ is entitled to compensatory damages from the defendants in a sum which exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A FOURTH CAUSE OF ACTION
FOR LOSS OF SERVICES**

39. Plaintiffs repeat, reiterate and reallege each and every allegation contained in those paragraphs of the complaint marked and designated 1. through 38. inclusive., with the same force and effect as if hereinafter set forth at length.

40. Prior to this action, plaintiffs FRANCISCO CHAVEZ and GLORIA BARREIRO-CHAVEZ were lawfully wed.

41. By reason of the foregoing, plaintiff GLORIA BARREIRO-CHAVEZ has been deprived of the affection, services, society, love, and companionship of her husband,

FRANCISCO CHAVEZ, and has been caused to become obliged to expend sums of money for medical and hospital care on her behalf.

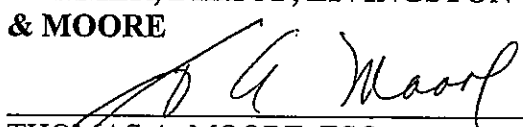
42. That by reason of the foregoing, plaintiff GLORIA BARREIRO-CHAVEZ is entitled to compensatory damages from the defendants in a sum which exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiffs demand judgment against defendant in such sum as a jury could find fair, adequate and just.

Dated: New York, New York
April 11, 2013

Yours etc.,

**KRAMER, DILLOF, LIVINGSTON
& MOORE**



THOMAS A. MOORE, ESQ.

Attorney for Plaintiff

**FRANCISCO CHAVEZ and GLORIA
BARRIERO - CHAVEZ**

Office & P.O. Address

217 Broadway, 10th Floor

New York, New York 10007

(212) 267-4177

X

FRANCISCO CHAVEZ and GLORIA BARRIERO-CHAVEZ

**ATTORNEY
VERIFICATION**

- against -

Defendants.


STATE OF NEW YORK)
:ss:
COUNTY OF NEW YORK)

That he has read the within Verified Summons and Complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

That the sources of his information and knowledge are investigations and records in the file.

That the reason this verification is made by affirmant and not by the plaintiff is that the plaintiff is not within the County where the attorney has his office.

Dated: New York, New York
April 11, 2014


THOMAS A. MOORE

Index No.

Year

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

FRANCISCO CHAVEZ AND GLORIA BARRIERO - CHAVEZ

Plaintiff(s),

- against -

THE CITY OF NEW YORK AND KIM J. CHARLES

Defendant(s),

SUMMONS & VERFIED COMPLAINT

KRAMER, DILLOF, LIVINGSTON & MOORE, ESQS.

Attorneys for Plaintiff(s)

FRANCISCO CHAVEZ AND GLORIA BARRIERO - CHAVEZ

Office and Post Office Address, Telephone

217 Broadway

New York, New York 10007

(212) 267-4177

To:

THE CITY OF NEW YORK
c/o **ZACHARY CARTER, ESQ.**
CORPORATION COUNSEL
New York City Law Department
100 Church Street
New York, New York 10007

KIM J. CHARLES
553A Monroe Street,
Brooklyn, NY 11221
